No. 78-651

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

PETER CACHUR,

Petitioner, Pro se,

VS.

WESTERN ELECTRIC, INC. HAWTHORNE WORKS and the BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO LOCAL UNION 1859,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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OPINIONS BELOW

1. The Motion for a Rehearing was directed to an Order which affirmed the Memorandum Opinion of the Honorable Joel M. Flaum of January 27, 1977, granting defendant, Western Electric Company's Motion for Summary Judgment, Appendix 1.

2. On May 9, 1978 United States Court of Appeals for the Seventh Circuit issued an unsigned order affirming the

Summary Judgment of the District Court, such unpleaded order not to be cited per Circuit Rule 35.

3. On June 27, 1978, The Honorable Walter J. Cummings, a Justice of the United States Court Of Appeals for the Seventh Circuit, entered an Order denying Petitioner, Peter Cachur's Motion for Rehearing, copy of which Order is attached hereto as Appendix 3.

JURISDICTION

1. The United States Supreme Court has jurisdiction under Amendment VII of the Bill of Rights, which guarantees petitioner that "the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise examined in any Court of the United States, than according to the rules of the common law."

2. This Court also has jurisdiction because of Petitioner's right to equal protection of the laws, namely, 29 U.S.C. 411, Section 101 (a)(5), which reads:

> "(5) Safeguards Against Improper Disciplinary Action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written, specific charges; (B) given a reasonable time to prepare his defence; (C) afforded a full and fair hearing. . . ."

3. This Court also has jurisdiction based upon the provision of 29 U.S.C. 412, Section 102:

> "Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

QUESTIONS PRESENTED

1. Whether the trial court erred by so far departing from the accepted and usual course of judicial proceedings that the Court granted a Summary Judgment when there remained disputed issues of material fact; or, in the alternative, whether Petitioner was deprived of his constitutional rights of jury trial, due process, and equal protection, which would be the case if granting Summary Judgments in the Northern District of Illinois, Eastern Division, and affirming them in the Seventh Circuit Court of Appeals, is so common that it is the accepted and usual course, even though such judgments be the result of dismissals when there are disputed issues of material fact.

2. Whether petitioner was deprived of the equal protection of 29 U.S.C. 411, Sec. 101(a)(5) by not having been served with written, specific charges before being fired after long and faithful years of employment, for alleged non-payment of dues; and whether non-payment of dues is justification for firing when an employee has withdrawn his union membership.

STATEMENT OF THE CASE

Petitioner admits to having applied for membership in Local Union 1859 about December 1954 by filling and signing a membership application form and signing an authorization for withholding dues by the payroll organization of the Company form. He was not given a copy of the I.B.E.W. Constitution and its rules at that time, and he had no problems until after the 1963 General Agreement between the Union and the Company expired at 11:59 P.M. on February 19, 1967. This agreement and all others prior to 1963 permitted membership withdrawal during the first ten days beginning with the effective date of each agree-

ment as defined in each agreement's Duration Article. A small number of members did apply for withdrawal during the mentioned first ten day period without any problem and a few even went so far as to reapply for admission sometime after withdrawal was granted. When the 1963 agreement ran its full course and expired at 11:59 P.M. on February 19, 1967 the Union announced that an impasse in negotiating a new agreement occurred and stated that the Federal Mediation and Conciliation Service's Commissioners were called in to settle the impasse. It is well documented that the impasse was not over the issue of wages since such wages suddenly appeared on the employees' pay details for the week ending March 5, 1967, this being the date when a new 1967 agreement containing a modification of the withdrawal or "escape period" was changed from during the first ten day period after the effective date of the expired (1963) agreement to the ten day period immediately preceding the expiration date in this 1967 agreement which the membership ratified on March 5, 1967, a Sunday. By registered letter dated February 27, 1967 petitioner notified both the Union and Company of his intent to withdraw from membership. Of the more than 11,000 members the Union claims it represented, more than 2,000 notifications of intent to withdraw were received by the Union and Company. The petitioner's records show that a refund of excessive dues withheld was sent to and received by petitioner in April 1967. Every employee in dissent was systematically approached by Company management who cited the 1967 agreement's Union Security Article as grounds that such employee had not achieved proper withdrawal. Two employees went so far as to take the matter before the N.L.R.B. as an unfair labor practice under Sections 7 and 8. On July 20, 1967 the Board denied these employees their rights and

ruled in favor of the Union and Company. Both the Union and the Company, having knowledge of this fact, waited until August 30, 1967 before confronting this petitioner with a copy of this document which later proved to contain a spurious signature of the Director of Appeals. The Union's representative orally charged this petitioner with being in arrears of dues for six months which petitioner denied owing the dues monies. After several through channels conferences with Company representatives, petitioner met with the Company's Director of Labor Relations representative. He directed petitioner to pay the dues within one week or be suspended for failure to pay. Petitioner demanded to see a copy of a letter from the Union to the Company dated prior to December 19, 1966 showing the Union's intent to terminate the 1963 Agreement. Petitioner stated he would pay the dues upon production of such a letter. The director stated that petitioner would see the letter when the right time came. Petitioner stated that the right time was now. The director would not produce the letter, petitioner did not pay and a week later was removed from the Company premises. The next day petitioner paid a visit to the regional NLRB office. He was advised by the officer of the day to pay the dues or else the Company would discharge him. The following day he appeared at the Union's hall and made a partial payment and promised to pay the remainder as soon as possible. After losing two day's wages, petitioner was reinstated to his job. Petitioner continued making dues payments directly to the Union until August 1969. Petitioner became aware in late June 1969 that a meeting to ratify a new agreement was about to be held. On the day before this scheduled meeting took place he sent the Union a registered letter notifying the Union "that on the second day of the ten day period immediately preceding the ter-

mination date of the 1967 agreement I no longer am a member of Local 1859." A new agreement became effective on July 26, 1969. The index* shows the following agreements previously entered into by the Company and the Union are hereby terminated; General Agreement dated February 25, 1967. Again the Union Security Article was modified. Petitioner paid no dues for August, September or October 1969. A week before October 31, 1969 the Company's representative demanded that petitioner pay the three month's dues or else be suspended. Petitioner did not pay and was removed from the Company's premises. On February 17, 1971 petitioner filed a complaint with the International Vice President's office.

On February 19, 1971 petitioner was given five minutes to pay the dues or else be discharged. Petitioner did not pay and was discharged by the Company's representative. On February 22, 1971 petitioner filed a complaint with the NLRB regional office. On March 2, 1971 the International vice president later informed petitioner that by letter dated February 26, 1971 President Becker "advises that you are not a member of Local Union 1859."

On April 6, 1971 the NLRB found petitioner to be a member of the Union who did not pay dues.

On August 30, 1971 the Company rehired petitioner at a pay rate of that of a new employee after petitioner again signed a membership application form and a dues withholding form.

In July 1974 petitioner again attempted to withdraw. The Company and Union made no issue and this time permitted petitioner to withdraw.

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* The 1967 General Agreement does not show that the previously entered agreement dated December 19, 1963 was terminated.

ARGUMENT

A.

THE TRIAL COURT ERRED BY SO FAR DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THAT THE COURT GRANTED A SUMMARY JUDGMENT WHEN THERE REMAINED DISPUTED ISSUES OF MATERIAL FACT; OR, IN THE ALTERNATIVE, PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHTS OF JURY TRIAL, DUE PROCESS, AND EQUAL PROTECTION BECAUSE SUMMARY JUDGMENTS WITH DISPUTED FACTS ARE THE ACCEPTED COURSE IN THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

The trial Court erred in granting a Summary Judgment when there remained disputed issues of fact, and in so doing so far departed from the accepted and usual course of judicial proceedings, contrary to United States Supreme Cout Rule 19, 1(b); and the Court of Appeals in affirming it, so far sanctioned such a departure by the lower court, that the United States Supreme Court ought to grant this petition and issue a Writ of Certiorari to review this proceeding.

When the Amended Complaint and the Answers, by their denials, raise issues of fact, it is error for the Court to decide those issues, thereby reaching its own findings of fact, as it did in the Memorandum Opinion (p. 5):

> "The plaintiff is unable to establish that this alleged conspiracy resulted in a wrongful discharge (NLRB decision and this court's *findings of fact, supra*), or a breach of the terms of the collective bargaining agree-

ment (*this court's findings of fact, supra*). These findings distinguish this case from *Richardson* v. *Communication Workers of Amer.*, 443 F.2d 974 (8th Cir. 1971) relied upon by the plaintiff." (emphasis added re findings)

If the Court had not taken it upon itself to make findings regarding disputed facts and hence granting a Summary Judgment erroneously, the plaintiff at trial would have had the chance he is constitutionally entitled to, to prove to a jury that he was wrongfully discharged by a conspiracy between the Union and the Company. He will be able at trial, upon remand, to prove that the instant case is on all fours with the *Richardson* case in the Eighth Circuit. Thus, the United States Supreme Court ought to grant Certiorari; because, in addition to the aforementioned departure from the accepted and usual course of judicial proceedings, the Seventh Circuit Court of Appeals has rendered a decision in conflict with the Eighth Circuit Court of Appeals in *Richardson.*

Plaintiff Peter Cachur has indeed been suspended and expelled without appropriate proceedings; and Section 102 of 29 U.S.C. (supra) entitles him to bring this lawsuit for relief. The gravamen of this case is whether Appellant had voluntarily withdrawn; because, if he had done so properly, he would not have been subject to being expelled for non-payment of dues. This is the factual issue which makes the Summary Judgment granted by the trial court and affirmed by the Seventh Circuit Court of Appeals erroneous and requires review by the highest Court, because it affects all union members throughout the United States who are being denied freedom of choice and association in attempting to cancel their union membership, by the artful manipulation of provisions of contracts between unions and companies in such a way that the purported withdrawal period becomes non-existent or illusory.

B.

PETITIONER WAS DEPRIVED OF THE EQUAL PROTECTION OF 29 UNITED STATES CODE 411, SECTION 101(a)(5) BY NOT BEING SERVED WITH WRITTEN, SPECIFIC CHARGES BEFORE BEING FIRED FOR NON-PAYMENT OF UNION DUES.

The defendant Union states in its Answer to the Amended Complaint that the Plaintiff became a member of the Defendant Union and that the Union was obligated to act with reference to the Plaintiff and all other members according to the applicable law, including the Constitution of the I.B.E.W. Paragraph 8 states:

> "*8. The Defendant Union admits that the Plaintiff became a member of the Defendant Union and admits further that the Defendant Union was obligated to act in reference to the Plaintiff and all other members within its Bargaining Unit in accord with the applicable law, the International Constitution, the By-Laws of Local 1859 and the provisions of the then existing contract; the Union states* * *"

Since there was no provision in the then-existing 1963 General Agreement with reference to what constituted a member, the only "applicable law" other than the union constitution would be the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 402 Section 3(o). In the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 402, Section 3(o), it defines

> " 'member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization."

The requirements for membership are stated in Article 22, Sections 1 through 9 of the Union constitution:

ARTICLE XXII ADMISSION OF MEMBERS

Sec. 1. No L.U. can admit an applicant who does not reside in, or who is not employed at the trade, in the jurisdiction of the L.U., unless the L.U. is directed to admit him by the I.P.

No L.U. can admit any applicant who formerly was a member of the I.B.E.W., or who was suspended or expelled by, or indebted to any L.U., without consent of the I.S. and without first consulting the last L.U. of which the applicant was a member in regard to his character and record. The I.P. shall decide any case in dispute.

Sec. 2. Each applicant for membership shall fill out an application blank furnished or approved by the I.S., and answer all questions. The original application or a copy must be sent to the I.S.

Sec. 3. The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

Sec. 4. Each applicant admitted, shall, in the presence of members of the I.B.E.W., repeat and sign the following obligation:

"I, ..., in the presence of
(Given name)

members of the International Brotherhood of Electrical Workers, promise and agree to conform to and abide by the Constitution and laws of the I.B.E.W. and its local unions. I will further the purposes for which the I.B.E.W. is instituted. I will bear true allegiance to it and will not sacrifice its interest in any manner."

Sec. 5. The obligation card signed by the applicant shall be sent to the I.S.

The L.U. shall have each applicant, except as provided in Section 10 of this article, take the obligation before a regular meeting, or if it so decides, this may be done outside the regular meeting in the presence of the president or the vice president or the recording secretary.

Sec. 6. Each applicant shall pay the admission fee fixed by the bylaws of the L.U. to which he applies, or such fee as approved by the I.P. and ten (10) percent or more of such fee must accompany the application. Admission must be completed within ninety (90) days after application is made.

Sec. 7. The names of all applicants shall be read at a regular meeting of the L.U. The president shall appoint a committee to pass and report upon the applications, or the Executive Board may perform this function, as the L.U. may decide.

Sec. 8. If the applicant or applicants are reported upon favorably, a ballot or vote shall be taken, as the L.U. may decide, except as provided in Article XVII. If a majority of members present, vote in the negative, the applicant or applicants shall be rejected, and his or their names shall not again be proposed for six (6) months, and the admission fee shall be returned to the applicant.

Sec. 9. Any candidate failing to present himself for admission within one (1) month after his election and notification thereof, unless he gives good and sufficient reasons, forfeits his admission fee and cannot again be proposed for six (6) months."

Plaintiff admits that he, like all other employees seeking Union membership, did sign an Application for Membership form in December 1954 and again on August 30, 1971; but the Plaintiff did not admit signing and reading in the presence of other members of the Union, as is an additional re-

quirement prior to membership, the Obligation for Admission form. Therefore, there is no such record on file with the International Secretary in Washington, D.C., as required by law.

Thus, Plaintiff has no recourse but to deny that he was *ever* a Union member, irrespective of the other arguments and facts presented in this case as to whether he properly withdrew from the membership which the Union and the Company took to be valid; so that the question of whether Plaintiff was a valid Union member at the time he submitted his letter of withdrawal is certainly a disputed, material fact which precluded the entry of a valid Summary Judgment. This factual issue could only be resolved by production by the Union from its records of the Union International Secretary in Washington, D.C. of the second card required to have been signed by Plaintiff to become a valid Union member. It is the firm conviction of the Plaintiff that, when this issue of whether he was ever a member of Local 1859 is resolved, it will clear up all the other areas in dispute. This can only be accomplished by remanding this case to the District Court for trial of this issue. Therefore, this Petition for a Writ of Certiorari would be properly granted by this Court.

The Memorandum Opinion of the Honorable Joel M. Flaum stated in the first paragraph thereof, page 2:

> "Although Plaintiff has failed to allege the jurisdictional prerequisite of exhaustion of intra-union remedies, in order to reach the merits of the Plaintiff's claim the Court will assume, arguendo, that the allegations of the Plaintiff's Complaint bring it within the narrow exception to that rule."

Appellant was denied his constitutional right to due process; because he was denied an opportunity for "exhaustion of intra-union remedies," in that he was *never*, at any

time, advised *in writing* what, if any, charges there were against him, even though such written charges are required by the provisions of the Constitution of the International Brotherhood of Electrical Workers, Article XXVII Section 2-7 as well as by 29 U.S.C. 411. It was the duty of the Union to put the charges in writing so that Appellant would have a chance to respond to them; there was nothing Appellant could do to avail himself of intra-union remedies if he had no written charges to which he could respond.

CHARGES AND TRIALS

Sec. 2. All charges, except against officers and representatives of L.U.'s, shall be heard and tried by the L.U. Executive Board which shall act as the trial board, in accordance with Article XIX. A majority vote of the board shall be sufficient for decision and sentence.

(This section shall not be construed to conflict with power of the I.P. or the I.E.C. to take action in certain cases, as provided in Articles IV and IX.)

Sec. 3. All charges against a member or members must be presented in writing, signed by the charging party, and specify the section or sections of this Constitution, the bylaws, rules, or working agreement allegedly violated. The charges must state the act or acts considered to be in violation, including approximate relevant dates or places.

Sec. 4. Charges against members must be submitted to the R.S. of the L.U. in whose jurisdiction the alleged act or acts took place within thirty (30) days of the time the charging party first became aware, or reasonably should have been aware, of the alleged act or acts. The charges shall be read but not discussed at the next regular meeting of the L.U. following the filing of the charges. The R.S. shall immediately send a copy of such charges to the accused member at his last known address together with written notice of the time and place he shall appear before the trial board.

> Sec. 5. The trial board shall proceed with the case not later than forty-five (45) days from the date the charges were filed. The board shall grant a reasonable delay to the accused when it feels the facts or circumstances warrant such a delay. The accused shall be granted a fair or impartial trial. He must, upon request, be allowed an I.B.E.W. member to represent him.

The Memorandum Opinion also states in its first paragraph that, "the defendant company discharged plaintiff for failure to pay union dues as required by the contract." Appellant states in his Amended Complaint (par. 17):

> "The Company acknowledged his withdrawal by refunding to him a deduction from his paycheck of dues which had been made after his notice of cancellation. Plaintiff relied upon such refund of dues plus the lack of any dues deductions in the ensuing months, plus the silence of the Union, as an acknowledgement of his withdrawal from and cancellation of his union membership at the proper time and in the proper manner."

Since the Union and the Company contend throughout their pleadings that Appellant was fired because he had a duty to pay dues and was not paying dues, there clearly is a disputed issue of a material fact as to whether he was a union member during and after the time the Company had made their refund and made no further dues deduction.

The disputed issues of fact were—

(1) whether plaintiff had been damaged by a breach of fair representation by defendant International Brotherhood of Electrical Workers (IBEW) when, after its International Vice President had stated in writing "that you are not a member of Local Union 1859", the union then, at a later date, caused the Western Electric Company to fire him for alleged non-payment of union dues, after more than 30 years of continuous service; the disputed fact being whether he was a union member when he was fired; violating 29 U.S.C. sec. 411; and 29 U.S.C. Sec. 3(o); or

(2) whether plaintiff had been damaged by a breach of the collective bargaining agreement by Western Electric wherein the Company and Union agreed not to require payment of union dues or its equivalent by non-union employees; violating 29 U.S.C. sec. 301; or

(3) whether, if plaintiff had been a union member all along, despite the foregoing union statement to the contrary, he had properly and legally cancelled his union membership by sending a registered letter of withdrawal during the proper escape period under the collective bargaining agreement; here the disputed fact is what dates constituted the escape period; or

(4) whether a disputed fact is not shown to exist when the Memorandum Opinion states:

> "It appears that plaintiff's complaint attempts to allege that he properly withdrew from defendant union, however, defendant union refused to recognize such withdrawal and the defendant company discharged plaintiff for failure to pay union dues as required by the contract. . . .
>
> "The plaintiff's claim arises from his notification of withdrawal from the union on certain specified dates provided as an escape period in the collective bargaining contracts. The dates of the notice of withdrawal and the pertinent provisions of the collective bargaining agreement are not in dispute, thus summary judgment on the issue as to the effect of plaintiff's notice of withdrawal is proper."

"(T)he pertinent provisions of the collective bargaining agreement *are*" certainly *in dispute*. That is the principle disputed fact which should have precluded granting of a summary judgment. See Memorandum Opinion, Appendix 1. The provisions of the collective bargaining agreement are in dispute; because the plaintiff states in paragraph 14 of his Amended Complaint that—

> "By the provisions of the Agreement effective December 19, 1963, it expired 38 months later, on February 19, 1967. The escape period would therefore be from February 10 to March 1, 1967. Plaintiff and other members were never told nor given any indication that the escape period in the 1967 Agreement would be other than the first ten days."

The Union's Answer to the Amended Complaint—

> "if the Court should determine that the content of Paragraph 14 of Count I of the said Amended Complaint are allegations well pleaded, then the Defendant Union denies each and every allegation. . . ."

Said denial raises a factual issue.

Plaintiff stated in Paragraph 16 of the Amended Complaint:

> "There was no provision in the 1963 Agreement for its continuation on February 19, 1967, on a day-to-day basis. Either the 1963 Agreement was renewed as aforesaid for another year starting February 20, 1967: or, in the alternative, it had expired on February 19. 1967, and no contract was in effect from February 20, 1967 until March 5, 1967, at which time the 1967 Agreement was ratified and allegedly took effect. By either reasoning, the period from February 20 to March 1, 1967 was a proper, legal, official time for Plaintiff and others to withdraw from the Union by sending in their letter. Plaintiff notified the Union by his February 19, 1967 letter sent via registered mail that he was thereby withdrawing from the Union."

The 1963 General Agreement reads:

"ARTICLE 35 — DURATION

1. This Agreement shall become effective December 19, 1963, but only if ratified by the Union membership and approved by the International Office of the Union on or before December 16, 1963, and when so effective, shall continue in effect, subject to the other provisions of this Article *until terminated in accordance with Paragraph 6 of this Article*. . . .

6. Either party may terminate this Agreement at 11:59 P.M. on the later of the following two (2) dates, by notifying the other party, in writing, at least sixty (60) days prior to the date of termination:

    1. thirty-eight (38) months after the effective date of this Agreement; or

    2. twelve (12) months after the effective date of the Agreement resulting from the opening provided for in Paragraph 2 (b) above.

    If no such notice of termination is given, this Agreement shall automatically continue in full force and effect after the later of these two (2) dates for successive renewal periods of one (1) year each, subject to the right of either party to terminate this Agreement at the end of any renewal period by notifying the other party, in writing, at least sixty (60) days prior to the date of termination of its intention to terminate this Agreement."

Petitioner's Amended Complaint reads:

"15. The 1963 Agreement has a provision that, if neither the Company nor the Union advises the other party prior to 60 days before the expiration of the Agreement, then said 1963 Agreement would by its own terms be renewed

for one more year. Neither party did notify of any such intent; so, therefore, the 1963 Agreement was renewed for one year, beginning February 20, 1967. Such renewal renewed all the provisions of the 1963 Agreement including the provision that any member could withdraw from the union by sending a letter to the union. The first ten days of the renewed agreement were from February 20 to March 1, 1967."

"15. The Defendant Company admits the allegation contained in Paragraph 15 of Count II of Plaintiff's Amended Complaint only to the extent that neither of the parties notified the other of their intent to terminate the 1963 Agreement. With respect to the remaining allegations contained in Paragraph 15 of Count II of Plaintiff's Amended Complaint, the Defendant Company neither admits nor denies those allegations since said allegations relate to the contract effective December 19, 1963, which contract speaks for itself with respect to each of the allegations contained in Paragraph 15 of Count II of Plaintiff's Amended Complaint."

"15. The Defendant Union can neither admit nor deny the allegations of Paragraph 15 of Count 1 of the said Amended Complaint since the same relate to a subjective mental condition and to conclusions of the Plaintiff; however if the Court should determine that the content of Paragraph 15 of Count 1 of the said Amended Complaint are allegations well pleaded, then the Defendant Union denies each and every allegation of Paragraph 15 of Count 1 of the said Amended Complaint."

"And as a further and affirmative defense to the content of Paragraph 15 of Count 1 of the said Amended Complaint the Defendant Union states that the Contract effective December 19, 1963, would speak for itself in reference to its

duration and applicable provision for the withdrawal from membership; further the Defendant Union states affirmatively that it complied fully and completely with the then existing Contract and the applicable law related thereto."

The Union's denial reads:

> "the Defendant Union states that the letter dated February 19, 1967, of the Plaintiff, if in fact there were such a letter, was not in compliance with the applicable provision of the then existing Contract. . . ."

The Trial Court erred in making its own determination of what the facts were as to the escape period. Likewise, "the Defendant Company denies each and every allegation contained in Paragraph 16. . . ."

The Amended Complaint continues:

> "18. During the ten-day escape period beginning February 20, 1967, more than 2,000 members of Local 1859 sent letters to the Union and Company to cancel their union memberships. To avoid this mass exodus, the Union colluded with the Company, in their negotiations at that time, to change the escape period from the first ten days of the Contract, as it had always been theretofore, to the last ten days of the General Agreement which purported to follow and replace the 1963 Agreement, which had already, by its own terms, renewed itself until February 1968."

Although the Company must know from its own records that "(t)he Company acknowledged his withdrawal by refunding to him a deduction from his paycheck of dues", etc., it chose to make this a fact issue:

> "the Defendant Company denies each and every allegation contained in the said Paragraph 17 . . . (and) The Defendant Company denies each and every allegation contained in Paragraph 18. . . ."

The disputed facts are whether, since large number of members were sending in withdrawal letters during the escape

period, thus providing an incentive to the Union to retain such members by manipulating the escape period in their proposed new Agreement, from the first ten days to the last ten days of an Agreement, and whether either no contract was in effect prior to the alleged ratification of the 1967 Agreement, thus being a proper withdrawal period, or whether the 1963 Agreement by its own provisions renewed itself for one year more, thereby renewing the ten-day escape period at the beginning of the Agreement. In accordance with the National Labor Relations Act, Section 8(d) relating to unfair labor practices requires that, when there is a collective bargaining agreement in effect (the 1963 Agreement), the duty to bargain collectively shall mean that no party to such contract shall terminate or modify such contract unless the party desiring such termination or modification serves a written notice on the other party of the proposed termination 60 days prior to the expiration date thereof. Pleadings filed by the Company admit that no such notice was sent by either party. This fact either must be interpreted to be a disputed fact as to when the escape period existed in the 1963 and 1967 Agreements and during the interim period during which negotiations for a new agreement were being carried on; or, if it is an undisputed fact, then Plaintiff's claim that he had properly withdrawn from the Union is an admitted ultimate fact which requires a judgment in favor of the Plaintiff rather than against him. Further, this establishes the existence of an unfair labor practice which thereby accords jurisdiction to the trial court and does not require the jurisdictional prerequisite of exhaustion of intra-union remedies.

"UNFAIR LABOR PRACTICES

Sec. 8(d) For the purpose of this section, to bargain collectively is the mutual obligation of the employer

and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:"

Summary and Conclusion

It is for this Court to decide whether (a) Any member indebted to the Local Union for six months' dues shall be dropped from membership by the Financial Secretary and cannot become a member in good standing again in the International Brotherhood of Electrical Workers (I.B.E.W.) except by joining as a new member; or, on the contrary, (b) Whether a member in arrears of dues for six months is subject to being discharged for failure to pay dues as a condition of employment, as exists in the Union Security Article provided for in each General Agreement between the Union and the Company. If the former is true, then the most that can happen is that the member shall be dropped from membership; and, if the latter is true, then a foundation or a basis for a claim that the member is indeed in arrears in dues must first be established, and served upon the member in writing. The foundation or basis for such claim cannot be merely a request from the Union to the Company to correct the arrearage due, and not simply, upon failure to do so, to discharge the employee on grounds of failure to pay the arrearage allegedly due. The foundation or basis in establishing that claim is found in the I.B.E.W. Constitution, Article XXVII, Misconduct, Offenses and Penalties (Sections 3, 4 and 5):

"ARTICLE XXVII

MISCONDUCT, OFFENSES AND PENALTIES

(3) Violation of any provision of this Constitution and the rules herein, or the bylaws, working agreements, or rules of a L.U.

(4) Having knowledge of the violation of any provision of this Constitution, or the bylaws or rules of a L.U., yet failing to file charges against the offender or to notify the proper officers of the L.U.

(5) Obtaining membership through fraudulent means or by misrepresentation, either on the part of the member himself or others interested."

Since petitioner alleged in his Amended Complaint (par. 20b) that the Union and the Company were in collusion when, during their negotiations of February 1967, knowing that between 2,200 and 2,700 members of Local 1859 had sent letters withdrawing from the Union—and the defendants deny this—plaintiff is entitled to a trial on the merits to establish that "this alleged conspiracy resulted in a wrongful discharge" (see Appendix 1). If he would be allowed to prove that, this case could not be distinguished from *Richardson* v. *Communication Workers of Amer.* (supra). Failure to allow petitioner to prove such collusion, which is an unfair labor practice, leaves the Eighth Circuit decision in conflict with the Seventh Circuit Court of Appeals.

Therefore, it is respectfully suggested that this Court ought to issue the Writ of Certiorari in this case.

Respectfully submitted,

PETER CACHUR

Petitioner Pro se

Dated: September 22, 1978

APPENDIX

APPENDIX 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER CACHUR,

Plaintiff,

v. 74 C 2501

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO LOCAL NO. 1859, and WESTERN ELECTRIC COMPANY, INC.,

Defendants.

MEMORANDUM OPINION

JOEL M. FLAUM, *District Judge:*

Before the court is the defendant Western Electric Company's motion for summary judgment on the plaintiff's complaint which the court has characterized as alleging a breach of the duty of fair representation against defendant International Brotherhood of Electrical Workers (IBEW) in violation of 29 U.S.C. § 411 and a breach of the collective bargaining agreement by Western Electric in violation of 29 U.S.C. § 301. [Memorandum Opinion dated May 15, 1975]. It appears that plaintiff's complaint attempts to allege that he properly withdrew from defendant union, however, defendant union refused to recognize such withdrawal and the defendant company discharged plaintiff for failure to pay union dues as required by the contract. Although plaintiff has failed to allege the jurisdictional prerequisite of exhaustion of intra-union remedies, in order to reach the merits of the plaintiff's claim the court will assume, arguendo, that the allegations of the

plaintiff's complaint bring it within the narrow exception to that rule. *See Newgent* v. *Modine,* 495 F.2d 919, 927 (7th Cir. 1974); *Orphan* v. *Furnco Constr. Corp.,* 466 F.2d 795, 800-801 (7th Cir. 1972).

The plaintiff's claim arises from his notification of withdrawal from the union on certain specified dates provided as an escape period in the collective bargaining contracts. The dates of the notice of withdrawal and the pertinent provisions of the collective bargaining agreement are not in dispute, thus summary judgment on the issue as to the effect of plaintiff's notice of withdrawal is proper. *Cf. Local 9, Internat'l Union of Operating Engineers* v. *Siegrist Const. Co.,* 458 F.2d 1313 (10th Cir. 1972). Plaintiff sent notice of withdrawal to IBEW on February 27, 1967 and July 19, 1969. The escape periods authorized in the collective bargaining agreements from 1963 through 1971 were ten days after the effective date of the contract in 1963 (said effective date was December 19, 1963) and the final ten days of the 1967 contract which was subsequently modified to the ten days preceding July 25, 1971. It is apparent that the dates of plaintiff's notification do not coincide with the dates established by the dates set forth in the collective bargaining agreement for valid withdrawal.

The plaintiff contends that the 1963 agreement authorizes withdrawal during the first ten days following February 19, 1967. No support can be found for this argument in the record and the bargaining agreement expressly provides that the ten days commence at the effective date of the contract, December 19, 1963. Plaintiff further contends that the collective bargaining agreement authorized withdrawal ten days prior to termination of the 1967 contract, and that termination could occur on August 19, 1968 or February 19, 1970. It is undisputed that the 1967 contract was not terminated, but was modified by the union membership. One

provision contained in the July 26, 1969 modification agreement was that the escape period should be the ten days prior to July 25, 1971. Thus both plaintiff's attempts to withdraw from the union were ineffective under the applicable provisions of the collective bargaining agreement and plaintiff remained a member of the IBEW. It is undisputed that plaintiff was informed that he remained a member of the IBEW and that his attempt to withdraw had been ineffective, however, plaintiff refused to pay union dues. Pursuant to the collective bargaining agreement defendant Western Electric discharged plaintiff for failure to pay union dues. On the basis of the evidence before the court, the court finds that plaintiff was in fact, a member of the union who did not pay dues.

This determination is consistent with the decision of the Acting General Counsel of the National Labor Relations Board who found that no unfair labor practice had occurred in plaintiff's discharge for failure to pay union dues. [Decision of Irving Herman dated July 15, 1971].

It is clear that this court cannot be used as a forum to relitigate plaintiff's claim of wrongful discharge, as the national labor policy precludes federal district court intervention in the province of unfair labor practices. It is equally clear that the failure of the union to provide a convenient escape period during the years between 1963 and 1971 is not itself an actionable claim. *See e.g., Charles A. Krause Milling Co.,* 97 NLRB 536. Thus the gravamen of plaintiff's claims under *Vaca* v. *Sipes,* 386 U.S. 171, 177 (1967), and section 301 must be restricted to the allegations of unlawful conspiracy by union and management. However, plaintiff's allegations of conspiracy are utterly without factual basis. [See Plaintiff's Deposition and Memorandum in Support of Defendant's Motion to Dismiss]. The plaintiff is

unable to establish that this alleged conspiracy resulted in a wrongful discharge [NLRB decision and this court's findings of fact, *supra*], or a breach of the terms of the collective bargaining agreement [this court's findings of fact, supra]. These findings distinguish this case from *Richardson* v. *Communication Workers of Amer.*, 443 F.2d 974 (8th Cir. 1971) relied upon by the plaintiff.

Accordingly, the court hereby enters summary judgment for defendants based on the undisputed facts that plaintiff did not successfully withdraw from the union and that his discharge on the basis of failure to pay dues was not a wrongful discharge. The vague and conclusory (sic) allegations of conspiracy between defendants is without factual basis in the discovery of the lawsuit and it does not preclude the entry of such a judgment for the defendants as plaintiff's claim of wrongful discharge was the foundation of the *Vaca* v. *Sipes* and section 301 claims. *Cf. Hines* v. *Anchor Motor Freight Inc.*, S.Ct. (1976). Summary judgment is hereby entered for the defendants Western Electric and IBEW because on the undisputed facts of this action, defendants are entitled to judgment as a matter of law.

Joel M. Flaum

United States District Judge

Dated: January 27, 1977

APPENDIX 2

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued January 17, 1978
May 9, 1978
Before

Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILLIAM G. EAST, *Senior District Judge**

PETER CACHUR,

Plaintiff-Appellant,

No. 77-1294 vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Etc., and WESTERN ELECTRIC COMPANY, INC.,

Defendants-Appellees.

Appeal from the United States District Court for
the Northern District of Illinois,
Eastern Division.
No. 74 C-2501
Joel M. Flaum, Judge.

ORDER

This appeal is from the district court's order granting defendant's motion for summary judgment with respect to plaintiff's amended complaint.[1] We affirm.

---

* Senior District Judge William G. East of the District of Oregon is sitting by designation.

[1] Plaintiff initially argues that because the defendant union had not moved for summary judgment, the district court improperly dismissed the claim against the Union. Even assuming that a motion by the Union were necessary, the record clearly indicates that the defense motion for summary judgment granted by the district court was a joint motion. See Order of October 15, 1976.

According to his amended complaint, plaintiff has been employed by defendant Western Electric Company for thirty years. In December 1954 or January 1955, he was persuaded to become a member of co-defendant International Brotherhood of Electrical Workers, AFL-CIO, Local No. 1859. In March, he signed an authorization card directing the Company to deduct union dues for as long as he remained a union member.[2] When he joined the Union, he was assertedly told by fellow-member Patrick Fleming that he could cancel his membership during the first ten days of any closed shop collective bargaining agreement between the Company and the Union.[3]

While the December 19, 1963, bargaining agreement was in effect between the Company and the Union, plaintiff became dissatisfied with the Union's failure "to fairly represent his interests" and therefore planned to resign during the first ten-day escape period of the next collective bargaining contract. On March 5, 1967, a new collective bargaining agreement between the Union and Company was ratified, retroactive to February 19, 1967. This contract changed the membership escape period from the first ten days of the new contract to the last ten days thereof. Consequently, defendants refused to honor plaintiff's February 19, 1967, letter withdrawing from the Union. He paid no union dues from that date until November 2, 1967, when he commenced paying dues directly to the Union until July 1969.

[2] The legality of the dues check-off clause in the closed-shop agreement is not questioned. See 29 U.S.C. § 186(c)(4).

[3] The amended complaint explains that Fleming told Cachur that membership could be cancelled at the end of any contract period (¶ 7) and that Cachur interpreted Fleming's advice to mean that cancellation was possible during the first ten days of any agreement (¶ 14).

On July 27, 1969, the defendants modified the 1967 collective bargaining agreement, effective until July 25, 1971. Because of this modification, the 1967 agreement never terminated. Also the modification changed the escape period in the 1967 contract to the ten days prior to July 25, 1971. On July 19, 1969, plaintiff sent defendants a notice not to deduct dues from his pay and to terminate his union membership. This notice was similarly not honored as untimely.

In the amended complaint, plaintiff also alleged that he was suspended from his job on October 31, 1969, for nonpayment of union dues and was discharged on February 17, 1971, retroactive to the date of his suspension. About two years after his suspension, he was told by defendants to return to work on condition that he rejoin the Union and thereby be "reinstated with all his prior seniority and pension rights." According to Exhibit 1 to the amended complaint, plaintiff again became a dues-paying member of the Union on August 30, 1971, and the Company's uncontroverted answer shows that he was reinstated on that date with full seniority and pension rights which he had accrued prior to November 1, 1969.

In Count I plaintiff sought from the Union $25,000 for lost wages, $450 for "monies illegally collected as dues" and punitive damages of $1,000,000. In Count II he sought from the Company $25,000 compensatory damages and $10,000,000 punitive damages.[4] Summary Judgment was granted to defendants on January 31, 1977.

[4] Count III sought damages against both defendants for personal injury to plaintiff when he was assigned a new job in 1971, but on May 15, 1975, the district court dismissed Count III for failure to state a claim. This appeal does not involve Count III.

The plaintiff has not argued that the Union had an enforceable obligation to provide plaintiff with an escape period during the first ten days of each collective bargaining contract, nor have we found any authority requiring defendants to do so.[5] Accordingly, for the reasons advanced in District Judge Flaum's attached memorandum opinion, which we adopt as our own, summary judgment for defendants was proper.

Affirmed.

[5] At the oral argument defense counsel advised us that the General Counsel of the National Labor Relations Board had dismissed plaintiff's complaint about these escape periods.

Unpublished Per Curiam Order

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

May 9, 1978
Before
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILLIAM G. EAST, *Senior District Judge**

PETER CACHUR,

Plaintiff-Appellant,

No. 77-1294 vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL NO. 1859, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois
Eastern Division
No. 74-C-2501
Flaum, *Judge*.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from me, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

* Senior District Judge William G. East of the District of Oregon is sitting by designation.

APPENDIX 3

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
June 27, 1978

Before
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. _____
Hon. _____

PETER CACHUR,

Plaintiff-Appellant,

No. 77-1294 vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL NO. 1859, and WESTERN ELECTRIC COMPANY, INC., Hawthorne Works, etc.,

Defendant-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 74-C-2501
Joel M. Flaum, Judge

This matter comes before the court on the "Petition To Stay Mandate Pending Motion For Leave To File Motion To Reconsider Opinion And For Rehearing" filed herein on June 22, 1978 by counsel for the plaintiff-appellant. On consideration thereof, this court being fully advised concerning the circumstances of this matter,

It Is Ordered that said motion be, and the same is hereby, DENIED. The mandate of this court shall issue forthwith.

Supreme Court, U. S.
FILED
NOV 18 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-651

PETER CACHUR,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859,

Respondent,

and

WESTERN ELECTRIC COMPANY, INC.,

Respondent.

BRIEF OF WESTERN ELECTRIC COMPANY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-651

PETER CACHUR,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859,

Respondent,

and

WESTERN ELECTRIC COMPANY, INC.,

Respondent.

BRIEF OF WESTERN ELECTRIC COMPANY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent Western Electric Company, Inc., respectfully urges that the Petition for Writ of Certiorari filed herein be denied.

OPINIONS BELOW.

The Memorandum Opinion of District Judge Flaum of the United States District Court for the Northern District of Illinois granting summary judgment to Respondents Western Electric Company, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 is reprinted in Appendix 1 of

the Petition for Writ of Certiorari. That Opinion is not officially reported.

The unanimous and unpublished Per Curiam Orders and Opinion of a panel of the United States Court of Appeals for the Seventh Circuit affirming and adopting, *inter alia*, the Memorandum Opinion of the District Court, as its own, is reprinted in Appendices 2 and 3 of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to 29 U. S. C. § 301(a).

QUESTION PRESENTED

Whether the District Court and Court of Appeals on review erred in granting summary judgment in favor of Respondents by ruling that Petitioner did not properly withdraw from the Union and that his subsequent discharge by Western Electric Company, Inc. for failure to tender dues was not wrongful.

COUNTERSTATEMENT OF THE CASE.

The original Complaint in this action was filed on August 30, 1974. Petitioner alleged a breach of the duty of fair representation by his statutory collective bargaining agent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 and a breach of the collective bargaining agreement by his former employer, Western Electric Company, Inc. Petitioner claimed that he properly withdrew from membership in the Union, that the Union refused to recognize his withdrawal, and that the Company then discharged him for failure to tender dues as required by the parties' collective bargaining agreement.

The district court's Memorandum Opinion of January 27, 1977 accurately sets forth the facts in this case, many of which were misstated in the petition. For the convenience of the Court,

those findings of fact may be summarized as follows: Petitioner sent notices of withdrawal to the Union on February 27, 1967 and July 19, 1969. The escape periods authorized in the collective bargaining agreements from 1963 through 1971 were ten days after the effective date of the contract in 1963 (said effective date was December 19, 1963) and the final ten days of the 1967 contract which was subsequently modified to the ten days preceding July 25, 1971 by the membership. Accordingly, Petitioner's notices of withdrawal were untimely. Petitioner was advised that his attempt to withdraw was ineffective and that he remained a member of the Union with a continuing obligation to tender dues. Petitioner refused to tender dues and, pursuant to the union-security provisions of the collective bargaining agreement, he was terminated.

On January 27, 1977, the Honorable Judge Joel M. Flaum issued a Memorandum Opinion entering summary judgment for both Respondents. The court said:

> "[T]he court hereby enters summary judgment for defendants based on the *undisputed facts* that plaintiff did not successfully withdraw from the union and that his discharge on the basis of failure to pay dues was not a wrongful discharge. The vague and conclusory allegations of conspiracy between defendants are *utterly without factual basis* in the discovery of the lawsuit and it does not preclude the entry of such a judgment for the defendants as plaintiff's claim of wrongful discharge was the foundation of the *Vaca* v. *Sipes* and Section 301 claims . . . summary judgment is hereby entered for the defendants . . . because of the *undisputed facts* of this action, defendants are entitled to judgment as a matter of law." (Emphasis added.)

The Seventh Circuit Court of Appeals, unanimously affirmed the decision of the district court. The Seventh Circuit said:

> "The plaintiff has not argued that the Union had an enforceable obligation to provide plaintiff with an escape period during the first ten days of each collective bargaining contract, nor have we found any authority requiring

defendants to do so.[5] Accordingly, for the reasons advanced in District Judge Flaum's attached memorandum opinion, which we adopt as our own, summary judgment for defendant was proper.

"Affirmed."

"5. At the oral argument defense counsel advised us that the General Counsel of the National Labor Relations Board had dismissed plaintiff's complaint about these escape periods."

ARGUMENTS AGAINST GRANTING WRIT.

The Petition for a Writ of Certiorari suggests no issues in this case which warrant review for any of the reasons set forth in Rule 19 of the Supreme Court Rules.

Thus, there are no "special and important reasons" set forth in Petitioner's Brief which would commend this Court's exercise of discretion and granting of the writ. Further, there is no other court of appeals' decision in conflict with the instant decision of the Seventh Circuit.

I. Summary Judgment in Favor of Respondents Was Properly Granted by the District Court and Affirmed by the Seventh Circuit as There Were, and Are, No Genuine Issues of Material Fact.

In an effort to meet the requirements of Supreme Court Rule 19, Petitioner asserts that summary judgment was improper and that, in any case, the process of summary judgment was, and always is, misused in the District Court for Northern District of Illinois.

Petitioner demonstrates a fundamental misunderstanding of summary judgment proceedings pursuant to the Federal Rules of Civil Procedure Rule 56. Petitioner has again disregarded the basic proposition that not just any factual issue will prohibit issuance of summary judgment; but rather, the fact(s) must be both *material* and *genuine*.

The district court's issuance of summary judgment in the instant case, as affirmed and adopted by the court of appeals, is entirely consistent with these basic principles. After the conclusion of discovery, there remained no genuine and material issue for the trier of fact. The court pierced the bald allegations of the Amended Complaint and concluded that there was no basis upon which to perpetuate a "non-existent issue of fact." Thus, as to the assertions that Petitioner withdrew from the Union on certain specified dates, the court found:

> "The dates of the notice of withdrawal and the pertinent provisions of the collective bargaining agreement are not in dispute, thus summary judgment on the issue as to the effect of plaintiff's notice of withdrawal is proper. *Cf. Local 9, Internat'l. Union of Operating Engineers* v. *Siegrist Const. Co.*, 458 F. 2d 1313 (10th Cir. 1972)."

As to the allegations of conspiracy, the court held that they were utterly "without factual basis." Yet, those bald and unsupported allegations have reappeared in the instant Petition.[1]

In his Petition to this Court, Petitioner once again insists that he is entitled to a trial since both the district court's and court of appeals' interpretation of the applicable provisions of the collective bargaining agreement conflict with his own interpretation. It is abundantly clear, however, that the interpretation of a contract is not an issue of fact but an issue of law. It is well established that when the sole issue to be resolved is whether or not, as a matter of law, the provisions of a contract apply to

1. Plaintiff's "conspiracy" theory is legally unsound. He apparently claims the "conspiracy" is evidenced by the collective bargaining process. Federal law, however, requires that employers bargain with representatives of employees with respect to their terms and conditions of employment. 29 U. S. C. § 158(a)(5). This Court has recognized that the latitude of this statutory duty to bargain is broad. *Ford Motor Company* v. *Huffman*, 345 U. S. 330, 337-338 (1953). In the instant case, the Company had a statutory duty to negotiate with the Union. What Plaintiff terms "collusion" and "conspiracy" was no more than the statutorily mandated bargaining process.

a set of undisputed facts, the case should be decided by summary judgment.[2]

It is respectfully submitted that the issuance and affirmance of summary judgment below was entirely proper. Petitioner has identified no reasons for this Court to issue a writ of certiorari herein. Indeed, there are no compelling issues in this case warranting review by this Court.

II. There Is No Conflict Between the Circuits Warranting Grant of the Requested Writ.

Petitioner also argues that the writ should be issued because of the decision in *Richardson* v. *Western Electric Company, Inc., et al.*, 443 F. 2d 974 (8th Cir. 1971), which he improperly suggests has created a conflict in the circuits. As he argued before the district court, Petitioner claims that this case is directly on point and controlling.

Certainly, Petitioner's studious avoidance of specificity in discussing the *Richardson* case was no mere oversight. That case was, contrary to the instant case, supported by massive evidence adduced as to specific conduct.[3] As the district court found, the material facts in the instant were undisputed and totally different than those relied upon by the Eighth Circuit. The conflict, if there is any, relates to the facts relied upon by the two circuits, not the law.

---

2. *See e.g., Rigsby* v. *Mutual of New York*, 331 F. 2d 353, 354 (10th Cir. 1964), wherein the court stated:

> "The only issue was the application of the provisions of the contract to these facts. Under these circumstances, the trial court properly considered the matter on a motion for summary judgment. *Lopez* v. *Denver & Rio Grande Western R. R. Co.*, 227 F. 2d 830 (10th Cir.); *Wirtz* v. *Young Electric Sign Co.*, 315 F. 2d 326 (10th Cir.); *McCollar* v. *Euler*, 286 F. 2d 327 (10th Cir.)."

3. *See e.g.*, 443 F. 2d at 983, fn. 12.

CONCLUSION.

Based on the foregoing, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-651

PETER CACHUR,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859,

Respondent,

and

WESTERN ELECTRIC COMPANY, INC.,

Respondent.

BRIEF OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

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BRIEF OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859, respectfully urges that the Petition for Writ of Certiorari filed herein be denied.

OPINIONS BELOW.

The Memorandum Opinion of District Judge Flaum of the United States District Court of the Northern District of Illinois granting summary judgment to Respondents, Western Electric Company, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local 859, is reprinted in Appendix 1 of the Petition for Writ of Certiorari. That Opinion is not officially reported.

The unanimous and unpublished Per Curiam Orders and Opinion of a panel of the United States Court of Appeals for the Seventh Circuit affirming and adopting, *inter alia* the Memorandum Opinion of the District Court, as its own, is reprinted in Appendices 2 and 3 of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to 29 U. S. Section 301(a).

QUESTION PRESENTED.

Whether the District Court and Court of Appeals on review erred in granting summary Judgment in favor of Respondents by ruling that Petitioner did not properly withdraw from the Union and that his subsequent discharge by Western Electric Company, Inc. for failure to tender dues was not wrongful.

RESPONDENT'S STATEMENT OF CASE.

This cause of action originates from a Complaint filed on August 30, 1974, by Petitioner, Peter Cachur, alleging a breach of duty of fair representation against Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 (Union) and a breach of the Collective Bargaining Agreement by his former Employer, Respondent, Western Electric Company, Inc., (Company). Petitioner claimed that he properly withdrew from Membership in the Union, that the Union refused to recognize his withdrawal and that the Company subsequently discharged him for failure to pay dues to the Union as required by the Collective Bargaining Agreement between the Company and the Union.

Petitioner sent his notices of withdrawal to the Union on February 27, 1967, and July 19, 1969. The escape periods authorized in the Collective Bargaining Agreements from 1963-1971 were ten (10) days after the effective date of the Contract in 1963 and the final ten (10) days of the 1967 Contract, which was subsequently modified to the ten (10) days proceeding July 25, 1971 by the Union Membership. Accordingly, the Petitioner's Notices of Withdrawal were untimely. Petitioner was advised that his attempt to withdraw was ineffective and that he remained a member of the Union with a continuing obligation to pay dues. Petitioner refused to pay his dues and pursuant to the Union's Security Provisions of the Collective Bargaining Agreement, he was terminated.

After dismissal of his original Complaint by the District Court, the Petitioner filed an Amended Complaint which both the Company and the Union moved the Court to dismiss. Subsequently, on May 15, 1975, the Court dismissed certain portions of the Amended Complaint. In this ruling, the Court

indicated that subsequent to completion of discovery, at which time the issues would be more precise, the Respondents could file their appropriate Motions. The Court stated:

> "The Court also concludes that the NLRB's Resolution of Petitioner's unfair labor practices against the Western Electric Company is not a basis at this time for dismissing Count II. The conspiracy allegations of the Complaint were not before the Board. Once the issues are more precisely defined, the effect of this NLRB action can be determined".

On June 9, 1975, the Company filed its Answer to the Petitioner's Amended Complaint. Following disposition of other Motions, all parties commenced discovery in an effort to find the precise issues of the case. By Order of the Court, discovery was closed on July 2, 1976.

Subsequently, based upon the District Court's earlier Memorandum Opinion and evidence produced in discovery, the Respondent Company, filed a Motion for Summary Judgment in which the Respondent Union, joined pursuant to leave of Court.

On January 27, 1977, Judge Joel M. Flaum, issued his Memorandum Opinion, entering Summary Judgment for both Respondents:

> "The Court hereby enters Summary Judgment for Defendants based on the undisputed facts that Plaintiff did not successfully withdraw from the Union and that his discharge, on the basis of failure to pay dues, was not a wrongful discharge. The conclusionary allegations of conspiracy between the Defendants are utterly without factual basis in the discovery of the lawsuit and it does not preclude the entry of such a Judgment for the Defendant's as Plaintiff's claim for wrongful discharge was the foundation of the *Vaca* v. *Sipes* and Section 301 claims '. . . summary judgment is hereby entered for the defendant . . .' because on the undisputed facts of this action the Defendants are entitled to judgment as a matter of law."

On February 18, 1977, Plaintiff filed his Notice to Appeal seeking to overturn the District Court's issuance of Summary Judgment; the same being denied on May 9, 1978. Subsequently, on June 22, 1978, the Petitioner filed for reconsideration which was also denied and a mandate was issued on June 27, 1978.

ARGUMENT.

I.

THE COURT OF APPEALS AFFIRMATION OF THE DISTRICT COURT'S ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE COMPANY AND UNION WAS PROPER AND NOT A DENIAL OF EQUAL PROTECTION SINCE THERE WERE NO GENUINE ISSUES OF MATERIAL FACT REMAINING FOR TRIAL.

In his Petition for Writ of Certiorari, the Petitioner, Peter Cachur, attempts to reallege and reargue all that was previously argued in the District Court and Court of Appeals. Petitioner demonstrates a fundamental misunderstanding of Summary Judgment proceedings under Rule 56 of the Federal Rules of Civil Procedure. Rule 56(c) provides in relevant part as follows:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, Answers to Interrogatories and admissions on file, together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Therefore, the important elements of said Motion is to have no *genuine issues* as to *material facts.*

There were no genuine issues of material fact remaining for trial after the examination of the Respondent's Motion for Summary Judgment. It would appear that the Petitioner's main problem is his attempt to portray the facts of this instant case not only in his original Complaint, his Memorandum in Opposition to Summary Judgment, and his Appellate Brief, but also in his within Petition for Writ of Certiorari as the way he wants the facts to be as opposed to the way the situation truly existed. The Petitioner has attempted to obscure the main issue by his

references to an alleged conspiracy against him and against the entire membership of the Union.

The Petitioner continually attempts to skirt the issue of whether or not his letter of February 27, 1967, withdrawing from the Union was properly mailed within the given escape period.

It is obvious that the Court truly recognized the facts that were material and genuine to issues since the Court in its Memorandum of Opinion granting Summary Judgment truly sets out not only the dates during which the Petitioner attempted to withdraw from the Union but also the true escape periods contained in the Collective Bargaining Contract. See *Memorandum of Opinion,* Appendix A 1 of Petitioner's Petition for Writ of Certiorari.

The Court held, in fact, that no genuine material issue of fact remained and entered Summary Judgment in favor of Respondents. It is not worthy that the Petitioner at no time, either in his original Complaint, his Appellate Brief, or the within Petition for Writ of Certiorari provides any factual indication whatsoever that would provide any foundation for the alleged conspiracy between the Union and the Company.

The only purpose that would be served by conducting a trial in this cause would simply be a repetition of Petitioner's conclusionary allegations set forth in his Amended Complaint. The sole issue in this case turns upon the interpretation of the parties Collective Bargaining Agreement which is clearly a question of law and not a question of fact. As noted by the District Court and Appellate Court, no genuine material issues as to facts remained after discovery. The Petitioner's reference in his Petition for Writ of Certiorari to buy the alleged issues of fact which are indeed questions of law, did not preclude the issuance of Summary Judgment. It is, therefore, submitted that the District Court's entry of Summary Judgment in favor of the Respondent was properly affirmed by the Appellate Court since there were no genuine issues of material fact remaining for trial. The resolution of the legal issues decided by the District Court were not challenged by the Petitioner in his Appeal.

II.

PETITIONER WAS NOT DEPRIVED OF EQUAL PROTECTION OF 29 U. S. C., SECTION 411 101(a)5 WHEN THE DISTRICT COURT GRANTED SUMMARY JUDGMENT ON BEHALF OF RESPONDENTS SINCE THE SAME WAS NOT APPLICABLE.

The Petitioner attempts for the first time in his Petition for a Writ of Certiorari to interject that he was denied equal protection pursuant to 29 U. S. 411 by the District Court's granting of Summary Judgment. This position is improper and totally without foundation. 29 U. S. C. 411 Section 101(a)5 states:

> "Safeguards against improper disciplinary action—no member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been: (a) served with written specific charges, (b) given a reasonable time to prepare his defense, (c) afforded a full and fair hearing."

The section of the statute cited by the Petitioner in his Petition for Writ of Certiorari clearly sets forth that a member of a labor organization may be suspended, expelled, or otherwise disciplined for non-payment of dues without a requirement of the serving of written specific charges, a reasonable time to prepare a defense and equal and fair hearing.

Petitioner now is far afield from the original allegations of his Complaint. It would appear at this stage that he is now arguing that he was never a member of the Union and, therefore, was wrongfully discharged. Previously, the Petition had argued that he was a member of the Union and was wrongfully discharged. It is now apparent that the Petitioner is grasping for straws which just do not exist in order to maintain a cause of action against the Respondents.

There were no findings in either the NLRB Decision or the decision of the lower Courts which would either remotely indicate that the Petitioner was never a member of the Respondent Union. On the contrary, findings in evidence indicated that the Petitioner was a member of the Union not only once but twice. Petitioner failed to withdraw from the Respondent Union in accord with the provisions of the Union Agreement and was subsequently discharged. The Petitioner, thereafter, was reinstated with full seniority benefits in the Union and again attempted to withdraw wrongfully with the same results.

Petitioner was given ample time to set forth the cause of action to be granted. In failing to do so, the District Court was without any recourse other than to grant the Respondent's Joint Motion for Summary Judgment. For all those reasons set forth in the Respondent's respective Motion for Summary Judgment, Replies, and Appellate Briefs, the District Court's granting of Summary Judgment was proper.

At no time in the lower court or Appellate Court had Petitioner brought forth his present argument of denial of equal protection. It would, therefore, appear to be inappropriate to allow such an allegation in a Petition for Writ of Certiorari. For this reason alone Argument B of Petitioner's Petition for Writ of Certiorari should be denied.

CONCLUSION.

Accordingly for the reasons set forth in Judge Flaum's Memorandum Opinion granting Respondent's Summary Judgment along with the Opinion of the Appellate Court filed May 9, 1978, Summary Judgment on behalf of both Respondents was proper. It is, therefore, submitted by the Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859, that the Petitioner's Peter Cachur, Petition for Writ of Certiorari to the United States Court of Appeals, for the Seventh Circuit should be denied.

Respectfully submitted,

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